IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 4275 OF 2006

Mrs. Rameza Javed Jamadar ..Applicant
V/s
Javed Ahmed Abdul Samad Jamadar
and others ..Respondents.

Mr.S. Nazir Ahmed, Advocate for the applicant.

Mr. Jayesh B. Kocheta for respondent Nos. 1 to 3.

Mr. D.P.Adsule, APP for the State.

WITH
CRIMINAL APPLICATION NO.2655 OF 2006

Javed Ahmed Abdul Samad Jamadar & Ors ..Applicants.
V/s
Mrs. Rameza Begum Javed Jamadar & Anr. ..Respondents.

Mr. J.B. Kocheta, Advocate for the applicant.

Mr. S.Nazir Ahmed for respondent No.1.

Mr. D.P.Adsule, A.P.P.for the State.

CORAM : J.H. BHATIA, J.

DATE : 28TH MARCH, 2007.

P.C.

. Heard learned Counsel for parties.

2. The case, in brief, is that complainant Remeza Begum resident of Solapur was married to accused No.1

Javed Ahmed on 20th May, 1994. Thereafter she lived with her husband for about 4-5 months at Pune. According to her, on 26/10/1994, she was compelled to leave her husband's house by husband, father-in-law, mother-in-law, brother-in-law, sister-in-law and husband of sister-in-law and first wife of Javed Ahmed, who are accused Nos 1 to 7. It is her contention that during her stay at Pune, she was being treated with cruelty and she was pressurised to bring amount of Rs.30,000/- from her parents. As she could not fulfil their demand, she was physically and mentally tortured. After she left husband's house, attempt was made for settlement but the husband and his relatives insisted that she should first bring the amount of Rs.30,000/- then only she would be allowed to live with the husband. About this grievance, she lodged a report at Sadar Bazar Police Station Solapur on 17/12/1994. As the offences alleged in the F.I.R. were committed within the local jurisdiction of Nigdi Police station Pune, PSO, Sadar Bazar Police Station, Solapur transferred the F.I.R. to Nigdi Police Station for appropriate action as per law and on the basis of that, offence was registered and after investigation charge-sheet was filed by police against all the seven accused persons in the Court of J.M.F.C.,

Pimpri, District Pune. That case is registered as Criminal Case No.14/1995. The charge-sheet was filed in January, 1995. It appears that complainant Rameza Begum was not aware about the filing of charge-sheet by police against the accused, therefore, she also filed a private complaint in the Court of J.M.F.C., Solapur on 31/3/1995. On her complaint Reg.C.C.No.159/1995 came to be registered in the Court of J.M.F.C. Solapur and the process was issued against all the seven accused persons. The accused persons have filed Criminal Application No. 2655/2006 seeking transfer of Reg.C.C.No. 159/1995 from the file of J.M.F.C. Court, Solapur to the Court of J.M.F.C. Pimpri District Pune, on the ground that both the cases are based on the same allegations and the alleged offence was committed within the jurisdiction of J.M.F.C. Pimpri and therefore, J.M.F.C. Pimpri alone has got jurisdiction. It is further contended that it will be in the interest of justice that both the cases should be heard and disposed of together by the same Court to avoid any conflict of opinion.

3. Criminal Application No. 4275/2006 is filed by complainant Rameza Begum seeking transfer of Reg.

C.C.No. 14/1995 from the file of J.M.F.C. Pimpri to the file of J.M.F.C. Court II, Solapur. According to her complaint, the demand of Rs.30,000/- was made by the accused persons at Solapur during the meeting held on 1st December, 1994 and therefore, J.M.F.C., Solapur has also jurisdiction to hear and dispose of the matter. She also wants that both the matters he heard together by the same Court.

4. I have carefully gone though the contents of F.I.R. lodge by Rameza Begum at the police station, on the basis of which finally charge-sheet was filed and Reg. C.C. No. 14/1995 was registered by the Court of J.M.M.C., as well as the complaint lodged by her before J.M.F.C., Solapur. In the F.I.R. which was first in time, there was no mention about any demand made at Solapur and it was revealed that she was subjected to cruelty on account of demand of money at Pune. However, in the complaint, which was lodged later on, there is a mention that to settle the matter, a meeting of panchas was called at Solapur on 2nd December, 1994 and in that meeting also a demand of Rs. 30,000/- was made and that the accused persons had told that she would not be allowed to live with her husband, unless the demand was

fulfilled.

5. Mr. S. Nazir Ahmed, learned Counsel for the Rameza Begum contends that it would be more convenient, if both the matters are heard at Solapur and he contends that in view of the provisions of Section 178(b) of Cr.P.C. J.M.F.C. Solapur has jurisdiction to hear both the matters because the offence was partly committed within the local area of J.M.F.C. Solapur and partly it was committed within the local area of J.M.F.C. Pimpri. On the other hand, the learned Counsel for the accused persons contends that taking into consideration the contents of F.I.R. no offence was allegedly committed within the local limits of J.M.F.C. Solapur and whole of the alleged offence was committed within the local limits of J.M.F.C. Pimpri. Therefore, J.M.F.C. Pimpri alone has jurisdiction to entertain and hear these matters. Further he contends that as the case registered on the basis of police report based on her F.I.R. and the complaint filed by her pertains to the same offence, in view of Section 210 of Cr.P.C. it is necessary that both the cases should be clubbed together and heard and disposed off by the same Court. He further contends that the balance of convenience is in

favour of the accused and therefore, the case pending before J.M.F.C. Solapur should be transferred to J.M.F.C. Pimpri and not otherwise.

6. Taking into consideration the allegations it is clear that about the same facts the F.I.R. as well as private complaint was lodged with only difference that in the complaint there was allegation about the demand of Rs. 30,000/- in a meeting at Solapur, which was not in the F.I.R. Taking into consideration the facts of the case, it will be necessary that both the matters should be heard together. Section 210(2) Cr.P.C. requires that if a report is made by police officer under section 173 and on such report cognizance of any offence is taken by the Magistrate against any person, who is the accused in complaint case, the Magistrate shall inquire into or by together the complaint case and the case arising out of police report as if both the case were instituted on a police report. In view of this legal position and the fact of these two cases, evidence of same witnesses will be required to be recorded. However, in the complaint case, complainant may examine some witnesses about the demand of money made in the meeting at Solapur. Therefore, it will be

necessary that both the matters should be heard and disposed of together. The Court may allow the complainant to examine the additional witnesses pertaining to the meeting at Solapur, if they are not cited as witnesses in the police report and both the matters may be disposed of together.

7. Normally in the matrimonial matters, if more than one Courts have jurisdiction, the convenience of the wife should looked into but merely for convenience of the wife case cannot be transferred. In the present case, in the F.I.R. there was no allegation about the meeting at Solapur or demand made therein and as the F.I.R. revealed that the whole of the offence was committed within the local limits of J.M.F.C. Pimpri, the F.I.R. was transferred to the police Station Pimpri, District Pune and after the investigation the report was filed by the police under section 173 before J.M.F.C. Pimpri. There is no doubt that the J.M.F.C. Pimpri has jurisdiction to hear that matter. The complaint was filed after filing of the charge-sheet and in that complaint additional allegation pertaining demand of Rs. 30,000/- in the meeting at Solapur was made. In view of that allegations J.M.F.C. Solapur has

also jurisdiction to hear the matter. If the case pending at J.M.F.C. Solapur is transferred to the J.M.F.C. Pimpri, the complainant would be required to attend that case as and when she is summoned as prosecution witness. While in the complaint case her personal attendance may be exempted, unless and until her presence is necessary for recording her evidence. But on the other hand, if the case is transferred from Pimpri, District Pune to J.M.F.C. Solapur, as many as 7 accused persons would be required to attend the Court on every date at their own costs. It may also be noted that in the complaint the allegations are made not only against the husband, father-in-law and mother-in-law but also against the brother-in-law, married sister-in-law, her husband as well as first wife of accused No.1. Therefore, taking into consideration these circumstances, I find that the balance of convenience is in favour of the accused persons and taking into consideration the facts of the present case, it will be desirable to transfer the case from the file of J.M.F.C. Solapur to J.M.F.C. Pimpri.

8. For the aforesaid reasons, Criminal Application No. 2655/2006 is hereby allowed and Reg. Criminal Case

No.. 159/95 pending on the file of J.M.F.C. Court No.II, Solapur is hereby transferred to J.M.F.C. Pimpri, District Pune for hearing the matter together with R.C.C. No. 14/1995. The learned J.M.F.C Pimpri may exempt the personal attendance of complainant Rameza in the case registered on the basis of her private complaint till her presence is actually required for recording evidence in R.C.C. No.14/995.

9. Criminal Application No. 4275/2006 stands rejected.

(J.H. BHATIA, J.)